

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

MISSOURI'S WORKPLACE

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Improvements Help Workers' Compensation Work for Missourians

By Richard Stickann, Special Projects Coordinator, Division of Workers' Compensation

Workers' compensation laws were developed in North America in the early 20th century to provide a simple way to handle workplace injuries. The premise is fairly straightforward: workers who are injured as a result of their employment should receive quality medical treatment, be given adequate wage replacement when missing work because of the injury and be returned to work as soon as they are able.

Missouri's workers' compensation law was first enacted on April 30, 1925. Before then, the injured workers' only recourse for a work-related injury was to sue the employer in civil court - a slow, costly and uncertain legal process. The new law required major concessions from both employers and employees. Workers gave up their right to sue the employer in civil court and employers could no longer point to employee negligence as an excuse from liability.

Reforming the Law

For several years prior to 1994, Missouri employers realized significant increases in workers' compensation insurance premiums. Costs skyrocketed between 1984 and 1991, as the number of work-related injuries reported in Missouri increased 46 percent. Lost wage replacement benefits rose 44 percent and medical payments for injured workers climbed 47 percent.

By 1993, Missouri employers realized that rising workers' compensation costs had become a serious threat to economic growth, particularly for small businesses. The inefficiencies and burdensome costs of the workers' compensation system were also harmful to those whom the system was designed to benefit - the injured workers.

Based on these conclusions, the Missouri General Assembly enacted workers' compensation reform legislation in 1993. This new law focused on making the workers' compensation system more efficient, and emphasized two provisions in particular: safety and a competitive insurance market. Proponents of reform agreed that these two

provisions would do the most to reduce the costs that had strapped employers for nearly a decade.

Reducing Costs

Beginning in 1994, and as a result of the reform legislation, Missouri employers began to see a marked decrease in overall workers' compensation costs as well as a decline in the number of workplace injuries. Workers' compensation premiums in the regular insurance market in Missouri dropped from a record high of \$743.6 million in 1992 to \$548.0 million in 1999, most of that decline occurring after the 1993 reform legislation became effective. Similar reductions in costs and losses were experienced in the self-insurance market, as well.

According to the Missouri Department of Insurance (DOI), Missouri employers have experienced an overall 24.3 percent rate reduction for insurance to cover injured employees between 1994 and 2000. In addition, the DOI recommended that rate reductions continue through 2001 based on its own review of losses, as well as on recommendations of the National Council on Compensation Insurance, an insurance industry affiliated group that helps insurance companies establish rates.

Improving Workplace Safety

There also has been a significant reduction of workplace injuries in Missouri since the reform legislation took effect. Injuries have dropped from a record high of 197,054 in 1995 to 165,850 in 2000, a 16 percent decline over the period. The magnitude of this decrease in workplace injuries is even more pronounced when comparing it to the over nine percent increase in persons employed in Missouri, from 2.5 million in 1995 to 2.8 million in 2000.

Such declines in injuries translate into lower costs to pay for lost wages and medical care for the injured worker. Payments for Permanent Partial Disability, the benefit paid

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to injured workers who have experienced a permanent disability because of the workplace injury, declined nearly 15 percent between 1994 and 1998, recent years with the most complete data. Drops of 10.8 percent and 11.7 percent in temporary total disability (the replacement wage benefit paid to injured workers who are off work because of the injury) and medical costs respectively were seen over the same period.

Putting Technology to Work

Another change occurred in 1994 that improved the efficiency of the system. The Division began using Electronic Data Interchange (EDI) to allow insurers and self-insured employers to file First Reports of Injury electronically. At the end of March 2001, 43 percent of all injury reports were filed in this manner. With EDI, the report is in the Division's database immediately, providing valuable

information sooner and giving the Division the ability to track trends in workers' compensation more quickly.

A Combined Effort

While the 1993 reform legislation was the catalyst for the development of a healthy workers' compensation market in Missouri, and the Division of Workers' Compensation has worked diligently to provide safety and educational resources to employers to reduce injuries, it is the employers and employees in the state who deserve the credit for the turnaround of the workers' compensation system since 1993. A conscientious effort by employers and employees to institute safety measures and reduce hazards in the workplace has provided the impetus for a more efficient and user-friendly workers' compensation system. Such efforts will be the positive force that maintains the stability of the system in the future.

Workers' Compensation Fraud Has Costly Consequences

By Dennis Moore, Missouri Division of Workers' Compensation, Fraud and Noncompliance Unit

Since January 2000, 31 employers have been fined a total of more than \$49,000 for failing to provide workers' compensation coverage for their employees. In most cases, these employers were required to purchase workers' compensation coverage and pay for any uninsured injuries during their periods of noncompliance.

When employers fail to provide workers' compensation insurance for their workers, it can result in financial hardships for injured employees. The medical expenses incurred as a result of a workplace injury sometimes can even lead to bankruptcy.

To help protect workers from such situations, the state of Missouri requires employers with five or more employees to provide workers' compensation insurance coverage for their

employees. Employers in the construction industry are required to provide workers' compensation insurance coverage if they have one or more employees.

Any employer failing to insure liability in accordance with the law is deemed in noncompliance with the law. Noncompliance is a Class A misdemeanor. One example of noncompliance investigated by the Fraud and Noncompliance Unit involved a construction company where there was an injury to one of its employees. When the injured worker filed for workers' compensation benefits he discovered the employer was not insured. An investigation proved the employer was required to carry workers' compensation insurance. The case was forwarded to the Missouri Attorney General's office for prosecution. As a result, the suspect pled guilty to violating Missouri workers' compensation laws and was fined \$6,000.

The workers' compensation law also contains penalties for fraud. Fraud in the workers' compensation system can occur at any level, involving employees, employers, insurance carriers, attorneys, physicians and others who try to obtain or deny workers' comp benefits in a fraudulent manner. In one instance of fraud an employee at a nursing home alleged that while moving a patient, the bed rolled over her foot causing injury. Prior to reporting the injury to her employer, she had told co-workers that she injured her foot when she dropped a box on it at home. After the Fraud and Noncompliance Unit completed a fraud investigation, it was determined the claim was false. The Attorney General's office filed charges and the suspect pled guilty to workers' compensation fraud charges. She received a suspended jail sentence and was placed on two years probation.

If you have information about a person or company not complying with Missouri workers' compensation laws, call the Fraud and Noncompliance Unit at (800) 592-6003 or write them at PO Box 1009, Jefferson City, MO 65102-1009. All information is kept confidential.

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What is the Second Injury Fund?

By Richard Stickann, Special Projects Coordinator,
Division of Workers' Compensation

The Second Injury Fund was created in 1943 to provide an incentive to employers to hire disabled workers returning from duty in World War II. The Fund provided many persons with pre-existing disabilities, received in the war or in civilian jobs, with help obtaining employment by limiting the liability of employers to only those injuries the employee may receive while working for that employer. The Second Injury Fund paid benefits to the employee when the current injury combined with any prior disabilities to make the employee permanently and totally disabled. The employer paid for the current injury only and the Fund paid weekly benefits to the employee for the permanent total disability.

The liability of the Fund was expanded in 1955 to include any permanent partial disability that was compounded by a workplace injury.

In its 58 year history, the Fund has been further expanded to include the payment of medical bills of the employee when the employer fails to insure its workers' compensation liability as required by law, death benefits for the dependents of an employee killed on the job when the employer does not carry the required insurance, benefits for physical rehabilitation of the injured worker and benefits for wages from a second job when the employee is injured on another job.

The Second Injury Fund paid out nearly \$28 million in benefits in fiscal year 2000. That money for payment of benefits is funded by a surcharge on workers' compensation insurance premiums paid by employers. The maximum limit on the surcharge is three percent. The amount of surcharge is determined on an annual basis by the director of the Division of Workers' Compensation to generate revenues equal to 110 percent of the projected expenditures of the Fund for the upcoming year.

For more information on the Second Injury Fund, contact the Division of Workers' Compensation at (573) 751-4231.



Who to Contact at the Division of Workers' Compensation

Address

Missouri Division of Workers' Compensation
P.O. Box 58
Jefferson City, MO 65102-0058
Main Number: (573) 751-4231

Web Address

www.dolir.state.mo.us/wc

Employers Toll-Free Hot Line • (888) 837-6069

Employees Toll-Free Hot Line • (800) 775-2667

Missouri Workers' Safety Program • (573) 526-3504

Self-Insurance Unit • (573) 526-3692

Fraud and Noncompliance Unit • (800) 592-6003

Workers' Compensation



The Missouri Division of Workers Compensation provides essential services to help protect workers. They work with employers and employees to help reduce workplace injuries and diseases. Workers' compensation also promotes economic stability by improving workplace safety. But for you and your employees to get the most benefit from what this Division has to offer, you need a good understanding of their services and systems.

We hope this issue of *Missouri's Workplace* will help provide that understanding. Although we cannot touch on all of the many aspects of the program, or answer every question, we hope we answer some, and provide you with the resources you need to get the answers to others.

Many of the Division of Workers' Compensation's dedicated employees worked beyond the scope of their everyday responsibilities to bring you this information. I hope it is useful to you. As always, feel free to call any of the numbers on the Contact List found on this page for more information, or visit the Workers' Compensation web site at www.dolir.state.mo.us/wc.

Director's Comments

What to Expect in a Workers' Comp Hearing

By Rob Dierkes, Chief Administrative Law Judge, Division of Workers' Compensation

When an employer and employee disagree about a workers' compensation claim, a hearing may result. The following is an overview of what to expect if you find yourself facing the prospect of a workers' compensation hearing.

The hearing is an extremely important stage in a workers' compensation case. ***It is the only stage of the case during which evidence is presented.*** The parties (employer and employee) are "bound" by the evidence presented at the hearing when the case is later appealed to the Labor and Industrial Relations Commission or to the court of appeals. The parties cannot argue facts to the Commission or to the court of appeals, unless those "facts" have a basis in the evidence presented at the hearing. It is easy to see why a successful appeal almost always begins with a successful hearing.

Failure to call an important witness, ask an important question or submit an important document at the hearing cannot be "cured" after the fact. Complete preparation for the hearing is essential. It is important for a party to consult with its attorney well in advance of the hearing to know what issues are being contested, what evidence needs to be presented on those issues, what form that evidence will take, and the steps necessary to prepare and preserve that evidence prior to the hearing.

The Hearing Process – Presenting Evidence

A workers' compensation hearing is conducted by an administrative law judge (ALJ). A court reporter is present to preserve the record of the evidence presented, including the testimony of the witnesses called by the parties.

The employee has the burden of proof on most of the contested issues, so the employee will present his or her evidence first. Then the employer or insurer will present evidence. If there is a Second Injury Fund claim, the state treasurer's office (as custodian of the Fund), will then present its evidence, and rebuttal evidence may be presented

after that. The evidence will almost always include the testimony of the employee, and there may be testimony from the employee's spouse or other family members. There may also be testimony from the employee's supervisor, from the employer's human resource manager, or from co-workers.

Certain medical records of the employee will be a part of the evidence in almost every hearing. Usually the testimony of one or more physicians will be presented, most often by means of the transcript of the physician's deposition taken prior to the hearing, although it is not unusual for a physician to testify "live" at a hearing. Other expert witnesses may also be called to testify, such as vocational rehabilitation experts, psychologists, accountants or engineers.

While the employee has the burden of proof on most issues, the employer or insurer has the burden of proof on certain issues, including the reduction or forfeiture of employee's benefits for intentional self-inflicted injury, failure of the employee to use safety devices, failure of the employee to obey rules regarding use of alcohol or drugs, etc.

The Judge's Decision

Since, in most cases, a significant portion of the evidence consists of written materials (e.g., medical records, deposition transcripts) that need to be reviewed, it is unusual for the judge to announce his or her award at the conclusion of the hearing. In the vast majority of cases, the parties don't know the decision until they receive the judge's written award, which is issued within 90 days after the conclusion of the hearing. This award may be appealed to the Labor and Industrial Relations Commission within 20 days of the date of the award. The Commission's award may be further appealed to the Missouri Court of Appeals.

For more information about the appeals process, you may contact the Division of Workers Compensation at (573) 751-4231.

Self-Insuring Workers' Compensation Liabilities

By Richard Cole, Program Manager, Division of Workers' Compensation Insurance Section

As the workers' compensation insurance market goes through its cycle from low premiums and readily available coverage to higher premiums and more difficult to obtain coverage, many employers look for other options to meet their Missouri workers' compensation obligations. One available option is for employers to apply to the Division of Workers' Compensation for authority to *self-insure* their workers' compensation liabilities.

Self-Insuring as an Individual Employer

Individual employers seeking self-insurance authority are usually medium to large employers and must apply directly to the Division through the Insurance Unit. In order to qualify for individual self-insurance the employer must successfully complete an application process that includes a thorough review of the employers' financial condition, financial history, workers' compensation loss history, safety program, occupational disease exposures and other requirements. The employer must be able to demonstrate that it has an effective loss prevention program and the financial resources and ability to bear the financial burden of paying its workers' compensations losses. In addition, each individual employer must post adequate security in the form of a surety bond or escrow with the Division to insure payment of its workers' compensation liabilities, should the need arise. While the minimum security for individual self-insureds is \$200,000, the security required varies with each employer based on the employers' financial condition, loss history, outstanding claims and the potential for employee exposure to latent occupational diseases. The

Division reviews the employers' security requirements and adjusts the amount as necessary.

Self-Insuring as Part of a Trust

Smaller employers that may not qualify for individual self-insurance may apply for membership in one of the 27 group trusts authorized by the Division. Each trust maintains its own membership criteria, underwriting guidelines and sets premium rates subject to approval of the Division. By joining together under joint and several liability, trust members are able to pool sufficient assets to meet the aggregated liabilities of the members. There are numerous homogenous trusts organized to meet the needs of employers in the same or a similar industry such as hospitals, builders, county governments and grocers. However there are a number of heterogeneous trusts organized to meet the needs of a diverse group of employers to which an employer may apply. Application for membership in a trust is made through each trusts' marketer or administrator.

In order to retain its self-insurance authority each individual employer or group trust must file annual reports relating to their financial condition, claim payments, outstanding claim liabilities and current experience modification factor. Individual self-insured employers in the private sector are also required to maintain membership in the Missouri Private Sector Individual Self-Insurers Guaranty Corporation.

For more information, contact the Self-Insurance Unit of the Division of Workers' Compensation at (573) 526-3692.

Mediation Helps Resolve Workers' Compensation Cases

By Ron Harris, Legal Advisor, Division of Workers' Compensation

In 1993 the Legislature authorized the Division of Workers' Compensation to offer mediation as an alternative to a formal proceeding, referred to as a hearing or trial, when there is a disagreement regarding a workers' compensation claim.

Although procedures may vary from office to office, mediation is an informal proceeding. The purpose or goal of mediation is to help the parties identify and narrow down the areas in dispute, giving the parties one final opportunity to meet and try to resolve their disputes without proceeding to an evidentiary hearing.

Either an administrative law judge or a legal advisor for the Division conducts the mediation. The mediator begins by explaining the purpose of mediation and the procedure to be followed. In order to encourage the participants to speak freely, the mediator stresses that any notes he or she might

make will be destroyed if the mediation is not successful. Consequently, neither party will be bound by or held to any comments made during the mediation. In addition, should the mediation prove unsuccessful, the person conducting the mediation shall be disqualified from presiding at the evidentiary hearing unless the parties agree to the contrary.

Presenting the Issues

Each party is given an opportunity to present their respective positions regarding the disputed issues, and to present any testimony or evidence they wish to rely on in support of their position. The mediator may ask questions of either party and may or may not allow each to respond to comments made by the other party.

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Show Me Safety

How to Benefit from the Missouri Workers' Safety Program

By Tunde Akinmoladun, Program Manager,
Missouri Workers' Safety Program



Shannon Foster (left), safety specialist for The Helping Hand of Goodwill in Kansas City, MO and Missouri Workers' Safety Program Safety Consultant Eric Hallerud during an on-site visit. The Missouri Workers' Safety Program provides free assistance with occupational safety and health issues.

Most employers in Missouri are required by law to carry workers' compensation insurance. That same law also requires the employers' insurance carrier to provide its policyholders with comprehensive safety management services upon request. These services must include assistance with the development of a comprehensive safety and health program geared to the employer's specific needs, a review of existing safety

programs, the performance of safety audits which include on-site inspection and education, and assistance in the development of transitional duty programs.

Missouri Workers' Safety Program safety consultants make on-site visits at the request of the employer. If safety problems are detected, they share recommendations with the employer so that the employer can take corrective measures. The Missouri Workers' Safety Program does not disclose the outcome of an on-site visit to OSHA, EPA or any other regulatory agency. The Program does not issue citations or levy fines, and there is no charge to the employer.

The Workers' Safety Program also certifies safety consultants and engineers, maintaining a registry of these professionals that is available to employers. They also provide free copies of a wide variety of safety publications and maintain a lending library of safety videos at no charge to the borrower.

Employers who allow the Program's staff to share their expertise often find they can reduce job related accidents, illnesses and deaths. The result can be lower workers' compensation premiums, improved job performance and better productivity. In addition, following the recommendations of a Program consultant may help the employer avoid fines and penalties imposed by federal regulatory agencies after a serious injury or death occurs in the workplace.

For more information on any of the services this program offers, call (573) 526-3504 or visit them on the web at www.dolir.state.mo.us/wc/mwsp.

Mediation continued from page 5

Depending upon the issues involved, the nature of the dispute, as well as the personalities of the participants, the mediator may decide to meet with each party separately, this is referred to as a "caucus." Comments made during a "caucus" are confidential and will not be disclosed to the other party unless the mediator is given authority to do so. A "caucus" allows the mediator to get a better idea whether a party is willing to compromise to resolve the dispute and in some circumstances to discuss what the mediator sees as "strengths" or "weaknesses" of that party's position. The chances for a successful mediation depend upon the willingness of the parties to compromise.

The Advantages

There are many benefits or advantages of mediation that apply equally to both parties. Disputes can be resolved more quickly and the parties also incur less expense than they would if they were to proceed to hearing. Depositions are not required prior to mediation.

Perhaps the biggest advantage of mediation is that the parties are able to have some input in the final outcome of their case. Through the process of compromise both parties give on some issues in order to prevail on others. Unlike at an evidentiary hearing there is no "winner" and "loser." Rather, the result of a successful mediation is that both parties are "winners."

Frequently Asked Questions

By Richard Stickann, Special Projects Coordinator, Division of Workers' Compensation

Q. Am I required to carry workers' compensation insurance?

A. According to Missouri law, workers' compensation coverage is compulsory for all employers who have five or more employees. Construction industry employers who erect, demolish, alter or repair improvements must carry workers compensation insurance if they have one or more employees. Partners and sole proprietors may elect to obtain workers' compensation coverage on themselves. Any employer who is not required by law to carry workers' compensation coverage may elect coverage by purchasing and accepting a valid workers' compensation insurance policy.

Q. Who determines the medical care for the injured worker?

A. The employer has the right to select the health care provider such as the doctor, hospital or clinic. Often, the employer allows the insurance company to make this selection. The employer is not required to change treating physicians when asked to do so by the injured worker. However, in many cases, such a change may result in better medical care for the employee.

Q. Can a corporation be exempt from workers' compensation requirements?

A. A corporation may be exempt from workers' compensation requirements only if there are no more than two owners of the corporation and those two owners are the only employees of the corporation. Such a corporation may be exempt only after filing with the Division a notice of election to withdraw.

Q. Who is an "employee" under the workers' compensation law?

A. An employee is defined as every person in the service of any employer pursuant to any contract of hire or pursuant to any appointment or election including executive officers of a corporation. An employee is covered whether full or part-time and an employee is covered from the first day on the job.

Q. How can I find an insurance company?

A. Call the Missouri Department of Insurance toll free at (888) 200-1697. They can help employers find out what rates insurance companies may offer for certain classes of businesses. The employer needs to know the four digit class code in order to determine the applicable rates. Class codes can be obtained from the National Council on Compensation Insurance by calling (800) 622-4123.

Q. Can a contractor require a sub-contractor or independent contractor to carry workers' compensation insurance on themselves and their employees?

A. Yes, although a sub-contractor or independent contractor may be a sole proprietor and not required to carry workers' compensation insurance under the law. The contractor, as part of the contract, may choose to hire only those contractors who carry their own workers' compensation insurance.

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